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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.A. et al., Persons
Coming Under the Juvenile
Court Law.

B290735
(Los Angeles County
Super. Ct. No.
18CCJP02768)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

MARTHA J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Reversed.

Matthew Joseph Hardy III, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Martha J. (Mother) challenges the sufficiency of the evidence supporting the jurisdiction finding against her. We conclude the evidence presented at the adjudication hearing was insufficient to support jurisdiction and therefore reverse the finding as well as the disposition order, as to Mother only.

BACKGROUND

This dependency case concerns Mother, Martin A. (Father),² and their 17-year-old twins, N.A. and M.A. When they came to the attention of the Los Angeles County Department of Children and Family Services (DCFS), Mother and the twins lived in a home with other maternal relatives, including Mother's 23-year-old son, N.Q. (the twins' half brother). Father, who was not in a relationship with Mother, stayed at the home with Mother and the twins several nights per week to accommodate his medical appointments.

¹ Further statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal.

Sheriff's Execution of Search Warrant at Mother's Residence

Early one morning in April 2018, members of the Los Angeles County Sheriff's Department Jail Task Force and Special Enforcement Bureau executed a search warrant at the home Mother's family shared, as well as the residence next door where N.Q.'s girlfriend lived with her parents and siblings. An entry team of deputies cleared both homes and detained everyone present, including Mother and the twins.³ N.Q. was found hiding in a closet in his girlfriend's home. Thereafter, deputies searched the homes.

According to the sheriff's incident report, Mother identified N.Q.'s bedroom and told a deputy only N.Q. had access to the room because he locked it. In N.Q.'s bedroom, on top of his bed, deputies found an open rifle bag containing an assault rifle with a bump stock and a flashlight laser side mount. The rifle was loaded with 30 live rounds. Also inside the rifle bag were four additional magazines containing a total of 165 live rounds. A can found in N.Q.'s bedroom contained 22 boxes of ammunition.

Also in N.Q.'s bedroom, deputies found a small and a large digital scale, as well as a locked safe, which they pried open because they were unable to locate a key. The safe contained (1) cocaine wrapped in cellophane, (2) methamphetamine wrapped in a clear plastic bag, (3) pay and owe sheets in a notebook, (4)

³ DCFS's May 1, 2018 Detention Report and June 14, 2018 Jurisdiction/Disposition Report list Father as one of the persons present at Mother's home when deputies entered and cleared the residence. The sheriff's incident report, which DCFS attached to the jurisdiction/disposition report, however, does not list Father as one of the persons present when the home was cleared.

small, sealable, plastic bags, and (5) a measuring spoon. Using a key fob found in N.Q.'s bedroom, deputies unlocked his car and recovered 14 small, sealable, plastic bags containing cocaine.⁴ Video recording equipment provided video surveillance of the exterior of the home from N.Q.'s bedroom.

As stated in the incident report, N.Q. admitted to deputies that the rifle belonged to him and that he knew there were drugs in the safe in his bedroom. Deputies arrested N.Q. for possession of narcotics while armed with a loaded firearm, possession of controlled substances for sale, and possession of an assault weapon.⁵

DCFS's Interviews at the Scene

Because minors were present at Mother's residence⁶ (and the home next door) at the time of the search, deputies contacted DCFS's Multi Agency Response Team (MART)⁷ and asked for a social worker to respond to the home. When she arrived, the

⁴ The incident report indicates the substance found in the car resembled methamphetamine. Subsequent testing revealed the substance to be cocaine.

⁵ The items found and arrest made at the residence next door are not relevant to the dependency proceedings before us.

⁶ As set forth above, Mother and Father's 17-year-old twins, M.A. and N.A., were present. Also present at Mother's residence were seven and four-year-old maternal relatives. A companion DCFS case was opened for these children that is not part of the record before us.

⁷ In its detention report, DCFS stated MART responds to "homes associated with high levels of illegal gang, narcotic, weapons activity and other specialized investigations."

social worker interviewed Detective Llorens, who informed her about the narcotics, weapon, and ammunition found in N.Q.'s bedroom, and told her the assault rifle "was found inside [N.Q.]'s bedroom *and within access of any child.*" (Italics added.)

According to the incident report, Detective Llorens was part of the team that searched the home next door to Mother's residence. He was not part of the teams that cleared and searched Mother's residence. The incident report does not indicate whether the assault rifle was "within access of any child," as DCFS described in its detention report, or whether the door to N.Q.'s room was locked when deputies cleared the home, prior to the search. As set forth above, according to the incident report, when Mother identified N.Q.'s bedroom, she told a deputy only N.Q. had access to the room because he locked it.

The social worker also interviewed Mother, Father, N.A., M.A., and N.Q. at the scene, on the day of the search.

According to the detention report, Mother told the social worker she was aware N.Q. had drugs and weapons in the home. He had "threatened to kill her family." She had been "trying to kick out [N.Q.] from her residence but he refuse[d] to leave." She had been seeking help from the sheriff's department since 2017, to no avail. She was "glad" N.Q. was arrested because she did not want him in her home. She planned to apply for a restraining order to keep him away from the residence. She said N.Q. was "a risk to her younger children" (17-year-old twins N.A. and M.A.). The social worker described Mother as cooperative.

Father informed the social worker N.Q. was not his biological son. According to the social worker, Father stated, " 'Everyone knows that he [N.Q.] has weapons and drugs in this house. We have tried to kick him out but he won't leave.' "

In the detention report, the social worker wrote that N.A. stated he was not aware N.Q. had drugs and guns in the home, explaining, “ ‘I don’t talk to my brother.’ ” The social worker wrote that M.A. made the following statements: “ ‘Yes, I saw the weapons. My brother [N.Q.] was trying to show off. I never touch them. I stayed away from the weapons. . . . I saw my brother [N.Q.] using drugs. He snorted something up his nose. I only seen him once. . . . My brother [N.Q.] sleeps in the back and we stay away from him.’ ”⁸

The social worker interviewed N.Q. as he sat inside a patrol car. N.Q. confirmed the drugs and assault rifle found inside his bedroom were his. It appeared to the social worker that N.Q. was “coming down” from being under the influence of drugs.

Non-Detained Dependency Petition Filed

On April 30, 2018, DCFS filed a non-detained dependency petition under section 300, subdivision (b), alleging Mother and Father “established a detrimental and endangering home environment for [N.A. and M.A.] in that, on April 24, 2018, three ounces of cocaine, 1/2 ounce of methamphetamine, a loaded AK-47 with three magazines and 100 live rounds inside the AK-47 were found in the children’s home and within access of the children. The mother and father allowed the children’s adult sibling, N[.] Q[.], to use illicit substances in the children’s home. Further, on a prior occasion the adult sibling possessed and used [an] illicit substance while in the presence of the child M[A.].

⁸ As discussed below, the twins later informed DCFS, and their counsel informed the juvenile court, that the statements in the detention report attributed to N.A. were made by M.A. and vice versa.

The parents failed to protect the children in that the parents knew of the adult sibling's illicit drug use and the weapons the adult sibling possessed and allowed the adult sibling to reside in the home and have unlimited access to the children. Such a detrimental and endangering home environment established for the children by the parents and the parents' failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage, danger and failure to protect."

Also on April 30, 2018, a social worker called Mother to inform her about the date, time, and location of the detention hearing. Mother told the social worker she obtained a restraining order against N.Q. and changed the locks on the home.

Mother and Father appeared at the detention hearing on May 1, 2018. The juvenile court found DCFS made a prima facie showing that N.A. and M.A. were persons described by section 300 and also found there were reasonable services available to prevent detention and allow the minors to remain in the family home with their parents, as DCFS recommended. The court ordered DCFS to provide Mother and Father with family maintenance services, including referrals for parenting classes, individual counseling, and family counseling.

Jurisdiction/Disposition

On May 23, 2018, a DCFS dependency investigator interviewed M.A., N.A., Mother, and Father for the jurisdiction/disposition report.

M.A. told the investigator that the social worker who interviewed him on the day the home was searched had confused him with his twin brother N.A., in that he denied saying N.Q.

used drugs in front of him. M.A. stated, “‘I don’t even talk to [N.Q.]. I have nothing to do with him. We don’t get involved in each other’s business.’” He explained that N.Q. “gets upset easily and that to avoid conflict he decided to stop speaking to him.”⁹ M.A. denied he, Mother, and Father knew N.Q. kept drugs and an assault rifle in the home. Prior to the search, M.A. “suspected that [N.Q.] was involved with drugs” and believed Mother had the same suspicion. According to M.A., people came to the house to “pick up things” from N.Q., but he did not know if those things were drugs or the items N.Q. sold on the Web site “‘Offer Up.’” M.A. “recalled that Mother contacted law enforcement and requested help with [N.Q.], which was denied due to lack of proof.” M.A. stated Mother did not want N.Q. in the home.

During N.A.’s interview with the investigator, he questioned the allegations that Mother and Father knew N.Q. had drugs and an assault rifle in the home and that he and M.A. had access to the drugs and rifle, stating N.Q. always locked the door to his bedroom and no one else had a key. Like his twin brother, N.A. told the investigator that the social worker mixed up the statements the twins gave on the day of the search. He denied telling the social worker he once saw N.Q. use drugs (the statement attributed to M.A. in the detention report). He stated N.Q. “‘like[d] to show off and once he said he had cocaine, but it was baking soda.’” There were other times N.A. saw “‘what looked like cocaine,’” but he did not know if it was cocaine or

⁹ As set forth above, in the detention report, the social worker attributed the statement “‘I don’t talk to my brother’” to N.A.

baking soda because he did not know the difference. N.A. was aware N.Q. had BB guns, but he did not know N.Q. had an assault rifle. N.Q. once showed him a gun, and he thought it was an airsoft BB gun.

Both M.A. and N.A. told the investigator they felt safe in their parents' care.

Mother told the investigator she wanted to cooperate with DCFS. She denied the allegations that she knew, prior to the search, that N.Q. had drugs and an assault rifle in the home and that N.A. and M.A. had access to the drugs and rifle, stating N.Q. kept his bedroom locked and the family did not have access to the room. She admitted she had seen N.Q. with BB guns, "but not real guns." She stated: "It's true that last year I went to the police and asked for help with [N.Q.], because I suspected that he had drugs, but the police said they couldn't help me with anything because there was no evidence. I never saw him with any drugs, but I suspected that he was doing something." Mother admitted she knew N.Q. was arrested on drug-related charges in 2017.¹⁰ She stated N.Q. did not listen to her, so she did not "ask him questions to avoid conflict with him." She added that she did not know what he brought into the house because he "typically entered the home from the rear of the house directly into his bedroom." Since he left the home, other maternal

¹⁰ According to the jurisdiction/disposition report and the attached criminal history transcript, N.Q. was arrested for being under the influence of a controlled substance and possessing a controlled substance in February 2017. The record does not indicate he was convicted of those offenses. There were no other entries on his criminal history transcript, aside from the April 2018 arrest from which these dependency proceedings arise.

relatives were sleeping in his former bedroom. When confronted with the statement attributed to her in the detention report that she was aware N.Q. had drugs and weapons in the home, Mother told the investigator the social worker “ ‘lied’ ” and “ ‘twisted [her] words.’ ” Mother stated, “ ‘If I knew he had all of that I would not allow him to be here.’ ”

Mother explained to the investigator that she wanted the matter to be resolved and for N.Q. to be permitted to see N.A. and M.A. She understood the three-year restraining order precluded N.Q. from coming to the home but stated the order did not preclude her from having “peaceful contact” with N.Q. away from the home. Mother admitted that since his arrest, she had seen N.Q., who was sleeping in his car. She brought him food and money to buy food. Her adult daughter (the twins’ half sibling) met N.Q. on the corner so he could see his dog. The investigator requested a copy of the restraining order, and Mother agreed to provide it to DCFS.

Father told the investigator he wanted to cooperate with DCFS. His statements to the investigator were consistent with Mother’s—that he did not know, prior to the search, that N.Q. had drugs and an assault rifle in the home; that N.Q. kept his bedroom locked and the family did not have access to it; that N.Q. entered the home through the back door and went directly to his bedroom; that he avoided N.Q.; that he knew N.Q. had BB guns; and that the social worker who prepared the detention report got it wrong when she wrote that he stated on the day of the search that he was aware N.Q. had drugs and weapons in the home. Father also stated he knew N.Q. had “been in trouble with the law on a prior occasion, but did not know the details.” He told

the investigator he did not live at Mother's home and did not "have any control or input on what goes on in this house."

DCFS recommended the juvenile court declare N.A. and M.A. dependents of the court, allow them to remain in their parents' care, order family maintenance services, including parenting classes and individual counseling for Mother and Father, and order monitored visitation for N.Q. and his half siblings (once N.Q. contacted DCFS). As set forth in the jurisdiction/disposition report, DCFS did not believe Mother and Father were forthcoming about what they knew, prior to the search, regarding N.Q.'s activities in the home. Nor did DCFS believe Mother and Father "own[ed] their behavior" in placing N.A. and M.A. at risk by allowing N.Q. to live in the home and have unlimited access to the minors.

At the adjudication hearing, held on June 14, 2018, minors' counsel and DCFS's counsel asked the juvenile court to sustain the petition,¹¹ arguing Mother's and Father's statements to the investigator that they did not know about the drugs and assault rifle in the home were not credible, given their earlier contradictory statements to the social worker, their knowledge of N.Q.'s 2017 drug-related arrest, and Mother's efforts to seek law enforcement assistance in dealing with N.Q. Both minors' counsel and DCFS's counsel acknowledged Mother had obtained

¹¹ Minors' counsel informed the juvenile court that the social worker switched the minors' statements in the detention report, so the allegation in the petition that N.Q. used an illicit substance in M.A.'s presence should be amended to reflect that the incident occurred in N.A.'s presence. Although no one at the hearing disputed the minors' statements were switched, the allegation in the petition was not amended.

a three-year restraining order precluding N.Q. from visiting the home. Mother's counsel asked the court to dismiss the petition, arguing there was no evidence of current, substantial risk the children would suffer serious physical harm or illness. Father joined in Mother's arguments.

The juvenile court sustained the petition (count b-1 quoted above), finding Mother and Father reasonably should have known about N.Q.'s illegal activities in the home, and their recantations of their prior statements were not credible. The court found Mother's and Father's "actions demonstrate a lack of protective capacity and insight that presents an ongoing risk, despite N[.Q.] being out of the home."

Regarding disposition, the juvenile court declared N.A. and M.A. dependents of the court, made a home-of-parent placement order, and required Mother and Father to complete case plans, including parenting and individual counseling. The court also ordered monitored visitation between N.Q. and the minors, to occur outside the family home.

DISCUSSION

Mother challenges the sufficiency of the evidence supporting the jurisdiction finding against her. She acknowledges, even if we reverse the jurisdiction finding as to her, jurisdiction over the children may continue based on the unchallenged jurisdiction finding against Father. She urges us to decide her appeal and not dismiss it as moot, arguing (1) the jurisdiction finding is the basis for the disposition order, requiring her to complete a case plan, and (2) the jurisdiction finding against her could prove prejudicial in future matters. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 ["we generally will exercise our discretion and reach the merits of a challenge to

any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ ”.) We agree Mother’s challenge to the jurisdiction finding against her is not moot, for the reasons she articulates. Accordingly, we address the merits of her appeal. We note DCFS does not argue the issue is moot.

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Jurisdiction under section 300, subdivision (b), requires proof “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the jurisdictional hearing. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether

circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 627-629.) “Jurisdiction ‘may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur.’” (*In re C.V.* (2017) 15 Cal.App.5th 566, 572.)

At the time of the adjudication hearing, there was no evidence of a substantial risk the minors would suffer serious physical harm or illness (and it is undisputed the minors had not suffered past physical harm or illness). The drugs and assault rifle were confiscated by deputies. N.Q., the only person in the home who had possessed drugs and weapons, was no longer living in the family home. As indicated in the record, Mother acted quickly after his arrest to change the locks on the residence and obtain a restraining order because she wanted him out of her home. The three-year permanent restraining order precluded N.Q. from visiting the family home.¹² In the time between N.Q.’s arrest and the adjudication hearing (seven weeks), DCFS reported no incidents of Mother allowing N.Q. to come to her home or visit M.A. or N.A. The 17-year-old twins informed DCFS they felt safe in Mother’s home and care, and expressed no desire to visit N.Q. DCFS and the juvenile court believed the twins’ placement in the family home in their parents’ care was safe and appropriate.

¹² DCFS notes on appeal that Mother “never provided a copy of that [restraining] order to the social worker.” As set forth above, both DCFS’s counsel and minors’ counsel stated at the adjudication hearing that Mother had obtained a three-year restraining order. The issue was not in dispute below.

DCFS questions “Mother’s willingness to enforce the [restraining] order,” given her recantation of her prior statements regarding her knowledge of the drugs and assault rifle in the home, her concern about N.Q.’s welfare and his lack of housing, and her desire for N.Q. to see his half brothers. DCFS’s concern Mother will disregard the restraining order and allow N.Q. to visit the home is speculative and not evidence of a substantial risk the children will suffer serious physical harm or illness. While Mother’s attitude toward N.Q. might have softened since his arrest, there is no indication in the record that her resolve to keep N.Q. out of the home and protect the twins had diminished.

We reverse the jurisdiction finding as to Mother because it is not supported by sufficient evidence. We also reverse the disposition order as to Mother because it was based on the unsupported jurisdiction finding against her.

DISPOSITION

The jurisdiction finding (b-1) and the disposition order are reversed, as to Mother only.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.